IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 286

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

SOUTHWEST CONSOLIDATED CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

SECOND PETITION FOR REHEARING

A. CHAUNCEY NEWLIN,
FRED SIMON,
Attorneys for Respondent.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM 1941

No. 286

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,

v.

SOUTHWEST CONSOLIDATED CORPORATION,
Respondent.

SECOND PETITION FOR REHEARING

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

Respondent respectfully moves the Court to reconsider its decision in this case, in connection with its consideration of *Helvering* v. *Cement Investors, Inc., Commissioner* v. *Newton Trust,* and *Commissioner* v. *Newton, Jr.,* Nos. 644, 645 and 646, respectively, and to supplement its opinion in this case by passing on the question of the applicability to this case of Sections 112 (b) (5) and 113 (a) (8) of the Revenue Act of 1934, c. 277, 48 Stat. 680.

Presumably, disposition of the *Cement Investors* and *Newton* cases will entail a determination by this Court of

the applicability of Section 112 (b) (5) and 113 (a) (8) to insolvency reorganizations carried out after the effective date of the Revenue Act of 1934 (January 1, 1934). The applicability of those sections to the instant case has been argued to the Court by both the Commissioner (Petitioner's Brief, p. 24) and the taxpayer (Petition for Rehearing, pp. 1-3) but the Court has not passed on the point. The Government in the oral argument of the *Cement Investors* and *Newton* cases and in its briefs in those cases has stated its position as to the applicability of those sections to the instant case should they be held applicable in the *Cement Investors* and *Newton* cases.

The Court is aware of the importance of the question of the basis of the multitude of new corporations created in insolvency reorganizations carried out since the enactment of the Revenue Act of 1934. It is most desirable that the issue be settled. Thus far the Court has decided only the question of the applicability of Section 113 (a) (7). It has not passed on the question of the applicability of Section 113 (a) (8). We earnestly urge the Court not to leave the matter in such a state where it may be necessary to litigate all over again the question of the applicability of Section 113 (a) (8). It is within the power of the Court to avoid this result. In so doing it is not necessary for it to change its views as to the applicability of Section 113 (a) (7). It is necessary only for it to amplify its opinion by passing on the question of the applicability of Section 113 (a) (8).

We respectfully suggest to the Court that it issue a supplemental opinion in this case on that point. Whatever hesitancy the Court might feel in so doing, we submit, should be overcome by the thought that in settling this question now the Court will be preventing further and per-

haps long continued confusion in the administration of the law, and will be acting in the best interests of all parties concerned.

Respectfully submitted,

A. CHAUNCEY NEWLIN,
FRED SIMON,
Attorneys for Respondent.

I certify that this petition is presented in good faith and not for delay.

A. CHAUNCEY NEWLIN,
Attorney for Respondent.

April 1942.